

## COLORADO AND FEDERAL “PREDATORY LENDING” LAWS

	<b>Federal Home Ownership &amp; Equity Protection Act (HOEPA)<sup>1</sup></b>	<b>Colorado Consumer Equity Protection Act<sup>2</sup></b>
<b>Coverage</b>	Consumer credit secured by principal dwelling. Exempts purchase money acquisition & initial construction loans & reverse mortgages.	Same as HOEPA but property must be located in Colorado.
<b>Open-end included</b>	Exempt unless structured as open-end to evade law	Same as HOEPA
<b>Rate Trigger (Annual Percentage Rate)</b>	More than 8 points over comparable Treasury securities for 1 <sup>st</sup> lien loans; more than 10 points for junior lien loans <sup>3</sup>	Same as HOEPA
<b>Points/Fees Trigger (paid at or before consummation)</b>	Greater of 8% of total loan amount or \$592 <sup>4</sup> ; trigger includes credit insurance premiums or similar debt cancellation product costs whether paid in cash or financed and all compensation paid to mortgage brokers	Same as HOEPA except that points & fees percentage trigger lowered to 6% of total loan amount.
<b>Prepayment Penalties</b>	Allowed in first 5 years of loan; amount unlimited; not allowed if loan prepaid by refinancing with same lender or affiliate; at consummation, consumer’s total monthly debts (including \$32 payment) must be ≤ 50% of consumer’s monthly gross income (verified by signed financial statement, credit report, and consumer’s pay stubs).	Allowed in first 3 years of loan; amount limited to ≤ 6 mos. interest; must offer choice of loan with and without penalty [sample disclosure in § 5-3.5-102(1)(g)(III)]; not allowed if refinance with same lender, on partial prepayment, or on UCCC consumer loans.
<b>Financing of Single Premium Credit Insurance</b>	Yes, but included in points/fees trigger, even if paid in cash	Not allowed (including debt cancellation contracts, credit property insurance, and non-credit insurance) but monthly premiums and fees may be financed

<sup>1</sup> The federal Home Ownership and Equity Protection Act is implemented through the Federal Reserve Board’s Regulation Z. These descriptions are based on the law, federal Regulation Z, and Federal Reserve Board Staff Commentary. Copies of these documents may be available at law libraries, some public libraries, from financial regulators, and at [www.federalreserve.gov](http://www.federalreserve.gov). Scroll to “Rules and Acts” and select the requested law and applicable regulations.

<sup>2</sup> The Act is codified at §§ 5-3.5-101 to 5-3.5-303, 38-40-105, 6-1-105(1)(u), & 6-1-110(3), C.R.S. The Colorado Revised Statutes are available on the Colorado Attorney General’s web site at [www.coloradoattorneygeneral.gov](http://www.coloradoattorneygeneral.gov).

<sup>3</sup> The yield on comparable Treasury securities is published in Statistical Release H.15, “Selected Interest Rates.” It is available at [www.federalreserve.gov/releases](http://www.federalreserve.gov/releases), by calling the Federal Reserve Board at (202) 452-3244, and in major financial and metropolitan newspapers.

<sup>4</sup> This amount was \$579 for 2010 and is subject to annual adjustment by the Federal Reserve Board based on changes in the Consumer Price Index.

	<b>HOEPA</b>	<b>Colorado Consumer Equity Protection Act</b>
<b>“Flipping”/ Refinancing Within One Year Period</b>	Only allowed within 1 year by same lender or assignee if in consumer’s interest (consider whether fees & charges commensurate with amount of new money advanced and whether charges are bona fide and reasonable). Lender cannot evade provision by refinancing its loans through affiliates, arrangements with unaffiliated lenders, or modifying loan (whether or not underlying loan is extinguished) and charging a fee.	Same as HOEPA, plus no refi of special low or zero rate non-profit loans within first 10 years of loan without holder’s written consent. Low-rate loans defined as being 2 percentage points or more below yield on comparable Treasury securities.
<b>Suggest Default</b>	Not addressed	No
<b>Call/Due on Demand Provision</b>	Not allowed except for consumer fraud or material misrepresentation, consumer fails to meet repayment terms, or consumer’s action or inaction impairs collateral securing loan. HOEPA does not override state laws that require lender to provide right to cure or impose other duties prior to acceleration.	Same as HOEPA, plus allowed for due-on-sale provision or if lender in good faith believes its position is materially insecure or impaired
<b>Balloon Payments</b>	Allowed if loan term is more than 5 years. No restriction on bridge loan with term of 1 year or less connected to acquisition or construction loan.	Allowed if balloon is due no less than 120 months after consummation (after 10 years). No restriction on balloons for bridge loans of 18 months or less connected with acquisition or construction loan. No restriction if loan payment schedule adjusted for seasonal or irregular income of consumer
<b>Negative Amortization</b>	Not allowed (except for reasonable increases due to legal obligations unrelated to payment schedule such as addition of property insurance by lender if consumer fails to obtain it.)	Not allowed (except upon consumer’s request for deferral or forbearance)
<b>Default Rate of Interest</b>	Not allowed (except for rate changes per legal obligations in a variable or adjustable rate transaction)	Not allowed (except for periodic interest rate changes in variable rate loan consistent with loan agreement)
<b>Advance Payments</b>	No more than 2 periodic payments may be consolidated and paid from loan proceeds.	Not allowed to pay any periodic payments in advance from loan proceeds

	<b>HOEPA</b>	<b>Colorado Consumer Equity Protection Act</b>
<b>Advisory Notice</b>	At least 3 business days before closing provide written notice that consumer may cancel loan, could lose home, APR, payment amount, and for refinances, total amount borrowed including if applicable, premiums and costs for optional credit insurance and debt cancellation within tolerance of \$100 above or below amount borrowed.	At least 3 business days before closing provide written notice that consumer may cancel loan, could lose home, is responsible for paying property taxes and insurance, and should continue to make regular payments to avoid negative credit rating (notice printed in §5-3.5-103(1)(a)(I), C.R.S.).
<b>Repayment Ability</b>	Must determine and verify; cannot consider home's equity, prohibited from pattern/practice of extending credit without regard to ability to repay; must consider consumer's current & expected income, current obligations, and employment. Presumption of violation if lender makes loans without verifying & documenting repayment ability by reviewing credit reports, tax returns, payment records, and/or pension statements – effectively prohibiting stated income loans. For discounted initial rates, consider repayment ability based on non-discounted or fully-indexed rate at consummation.	Must determine and verify, can consider home's equity if also consider repayment ability, consumer's current & expected income, current obligations, and employment. Presumption of violation if lender makes loans without verifying & documenting repayment ability.  Stated income: repayment ability may not be based solely on stated income but may include other information that lender customarily obtains.
<b>Payment to Home Improvement Contractors Alone</b>	Not allowed. OK if paid by check payable to consumer, jointly to consumer & contractor, or at consumer's request to 3d party escrow agent per written agreement.	No – same as HOEPA.
<b>Mandatory Arbitration Clauses</b>	Not addressed. See Federal Arbitration Act and related case law	Not allowed unless complies with rules of nationally recognized arbitration association, does not require arbitration in “distant forum,” lender required to pay at least 50% of any filing fee and all of first day's fee.
<b>Payoff Quotes/Releases Upon Prepayment</b>	Not addressed	Must provide payoff quote at no charge within 5 business days after written request. No charge for release upon prepayment.

	<b>HOEPA</b>	<b>Colorado Consumer Equity Protection Act</b>
<b>Credit Reports</b>	Not addressed	Must report favorable & unfavorable info quarterly unless held for less than 90 days or a dispute exists
<b>Interest Refund Method</b>	Actuarial or more favorable method (to consumer) for interest rebate due to acceleration on default.	Not addressed. If UCCC consumer loan, must use actuarial or more favorable method.
<b>Damages/Enforcement</b>	Administrative remedies by federal agencies; AG has 3 year statute of limitations if obtains permission of federal regulator; civil actual damages & all finance charges and fees paid by consumer; 1 year statute of limitations from date of occurrence; extended right to rescind; class action cap of \$1/2 million or 1% net worth; lender may correct upon self-discovery w/out liability	Attorney General and consumers have same remedies as under HOEPA, including civil damages, & class actions, rescission; lenders have same rights as under HOEPA to correct errors upon self-discovery and apply bona fide error defense. Because law is an article of the UCCC, administrator of UCCC may enforce using existing UCCC remedies.
<b>Assignee Liability</b>	Yes, unless reasonable person would not know from loan documents that loan was covered by HOEPA; mortgage must contain notice of assignee liability.	Yes, same as HOEPA
<b>Preemption</b>	All lenders must comply with HOEPA	If CCEPA is preempted as to national banks and federal savings & loans, then it is also inapplicable to their operating subsidiaries and to state banks and their operating subsidiaries.
<b>Local Ordinances</b>	Not addressed; preempts laws providing fewer protections	Prohibits political subdivisions from passing ordinances & resolutions “pertaining to lending activities.”
<b>Effective Date</b>	October 1, 1995 as amended October 1, 2002	January 1, 2003 for sections described above; section 38-40-105 prohibiting deceptive advertising, false statements, & misrepresentations, and allowing courts to invalidate mortgage if unconscionable effective June 7, 2002.

Note: In areas where there are differences between federal and state law and federal law arguably provides greater consumer protections, state law may be preempted and creditors should follow federal law to avoid liability.

This document is a summary and does not include all provisions of the Home Ownership Equity and Protection Act, the Truth in Lending Act, Regulation Z, the Consumer Equity Protection Act, and the Uniform Consumer Credit Code. In particular, it does not describe the deceptive mortgage practices prohibited in § 38-40-105 and the applicable remedies. The actual laws and regulations referenced should be reviewed for a complete understanding of the law. This document is not intended as legal advice. Contact your attorney for complete compliance information.

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